

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

ALVIN DARRELL SMITH,

Petitioner,

v.

**2:05 CV 64
(Maxwell)**

WARDEN AL HAYNES,

Respondent.

ORDER

It will be recalled that on September 1, 2005, *pro se* Petitioner Alvin Darrell Smith, an inmate at USP Hazelton in Bruceton Mills, West Virginia, instituted the above-styled civil action by filing an Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241.

It will further be recalled that the case was referred to United States Magistrate Judge John S. Kaull in accordance with Rule 83.09 of the Local Rules of Prisoner Litigation Procedure.

By Order entered June 26, 2006, Magistrate Judge Kaull indicated that he had conducted a preliminary review and had determined that summary dismissal of the Petitioner's Application for Habeas Corpus was not warranted. Accordingly, Magistrate Judge Kaull's June 26, 2006, order directed the Respondent to show cause why the Petitioner's Application for Habeas Corpus should not be granted.

The Respondent's Memorandum In Support Of Return On Petition For Writ Of Habeas Corpus And Motion To Dismiss was filed on August 22, 2006. The Petitioner's Reply to the Respondent's Motion To Dismiss was filed on September 5, 2006. Additionally, the Petitioner filed numerous other documents in support of his claims and the following Motions:

1. Motion for Writ of Mandamus;
2. Request for Release Pending Decision and for Expedited Evidentiary Hearing;
3. Combined Motion for Preliminary Injunction, Request to Accelerate Adjudication of Merits, Request for Evidentiary Hearing, and Request for Release on Bond Pending Decision; and
4. Motion for Writ of Mandamus and for Writ of Prohibition.

On June 27, 2007, United States Magistrate Judge John S. Kaull issued an Opinion/Report And Recommendation And Order Denying Petitioner's Request For Release And For Expedited Evidentiary Hearing wherein he recommended the following:

1. Respondent's Motion To Dismiss be granted;
2. Petitioner's Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 be denied;
3. Petitioner's Motion for Writ of Mandamus be denied;
4. Petitioner's Request for Release Pending Decision and for Expedited Evidentiary Hearing be denied;
5. Petitioner's Combined Motion for Preliminary Injunction, Request to Accelerate Adjudication of Merits, Request for Evidentiary Hearing, and Request for Release on Bond Pending Decision be denied; and
6. Petitioner's Motion for Writ of Mandamus and for Writ of Prohibition be denied.

In his Opinion/Report And Recommendation and Order Denying Petitioner's Request For Release And For Expedited Evidentiary Hearing, Magistrate Judge Kaull provided both

parties with ten (10) days from the date of said Opinion/Report And Recommendation and Order in which to file objections thereto and advised the parties that a failure to timely file objections would result in the waiver of their right to appeal from a judgment of this Court based upon said Opinion/Report And Recommendation and Order.

On July 6, 2007, the Petitioner's Objections To Magistrate Kaull's Opinion/Report And Recommendation and Order were filed with the Court.

Upon an independent *de novo* consideration of all matters now before the Court, it appears to the Court that the issues raised by the Petitioner in his Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 and the above-listed Motions were thoroughly considered by Magistrate Judge Kaull in his Opinion/Report And Recommendation and Order. Furthermore, upon consideration of the Petitioner's Objections, it appears to the Court that the Petitioner has not raised any issues that were not thoroughly considered by Magistrate Judge Kaull in said Opinion/Report And Recommendation and Order, with the exception of the Petitioner's concerns regarding Magistrate Judge Kaull's ability to review his case in an impartial and unbiased manner. In this regard, the Petitioner references a Report And Recommendation entered by Magistrate Judge Kaull in a civil rights action instituted by the Petitioner on December 6, 2005 (See Civil Action Number 3:05 CV 130). The Court has carefully considered the Petitioner's concerns regarding Magistrate Judge Kaull's impartiality and is firmly convinced that those concerns are unfounded. The undersigned United States District Judge has worked closely with Magistrate Judge Kaull for a number of years and has never seen any evidence that Magistrate Judge Kaull does not address each and every claim by each and every litigant in a completely fair, impartial and unbiased manner. The fact that Magistrate Judge Kaull may have recommended that a motion brought by the Petitioner in a separate civil action be denied does not, in any

way, prejudice him toward the Petitioner in this, an entirely separate civil action.

The Court, upon an independent *de novo* consideration of all matters now before it, is of the opinion that Magistrate Judge Kaull's Opinion/Report and Recommendation and Order accurately reflects the law applicable to the facts and circumstances before the Court in the above-styled action. Accordingly, it is

ORDERED that the Opinion/Report And Recommendation And Order Denying Petitioner's Request For Release And For Expedited Evidentiary Hearing entered by United States Magistrate Judge John S. Kaull on June 27, 2007 (Docket No. 44), be, and the same is hereby, **ACCEPTED** in whole and this civil action be disposed of in accordance with the recommendation of the Magistrate Judge. Accordingly, it is

ORDERED that the Respondent's Motion To Dismiss (Docket No. 23) be, and the same is hereby, **GRANTED**. It is further

ORDERED that the Petitioner's Application for Habeas Corpus Pursuant to 28 U.S.C. § 2241 (Docket No. 1) be, and the same is hereby, **DENIED** and **DISMISSED**, with prejudice, and **STRICKEN** from the Court's docket. It is further

ORDERED that the Petitioner's Motion for Writ of Mandamus (Docket No. 34) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Petitioner's Request for Release Pending Decision and for Expedited Evidentiary Hearing (Docket No. 35) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Petitioner's Combined Motion for Preliminary Injunction, Request to Accelerate Adjudication of Merits, Request for Evidentiary Hearing, and Request for Release on Bond Pending Decision (Docket No. 36) be, and the same is hereby, **DENIED**.

It is further

ORDERED that the Petitioner's Motion for Writ of Mandamus and for Writ of Prohibition (Docket No. 37) be, and the same is hereby, **DENIED**. It is further

ORDERED that the Clerk of Court shall enter judgment for the Respondent. It is further

ORDERED that should the Petitioner desire to appeal the decision of this Court, written notice of appeal must be received by the Clerk of this Court within thirty (30) days from the date of the entry of the Judgment Order, pursuant to Rule 4 of the Federal Rules of Appellate Procedure. The \$5.00 filing fee for the notice of appeal and the \$450.00 docketing fee should also be submitted with the notice of appeal. In the alternative, at the time the notice of appeal is submitted, the Petitioner may, in accordance with the provisions of Rule 24(a) of the Federal Rules of Appellate Procedure, seek leave to proceed *in forma pauperis* from the United States Court Of Appeals For The Fourth Circuit.

The Clerk of Court is directed to transmit a copy of this Order to the *pro se* Petitioner and to counsel for the Respondent.

ENTER: August 24th, 2007


United States District Judge